

HOUSE BILL NO. 460

INTRODUCED BY B. WISEMAN

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE CITIZEN DATA PROTECTION ACT TO PROVIDE PRIVACY PROTECTION FOR ELECTRONIC DATA AND INFORMATION; PROVIDING CONFIDENTIALITY REQUIREMENTS FOR PROVIDERS OF INTERNET SERVICE; PROVIDING EXCEPTIONS; AND REQUIRING ENFORCEMENT BY THE DEPARTMENT OF JUSTICE OR THE APPROPRIATE COUNTY ATTORNEY."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title -- purpose. (1) [Sections 1 through 5] may be cited as the "Citizen Data Protection Act".

(2) The legislature finds that the right of privacy provided under Article II, section 10, of the Montana constitution must keep pace with the rapid changes in technology.

(3) The legislature also finds that:

(a) the 10th amendment to the U.S. constitution provides that powers not delegated to the federal government by the U.S. constitution are reserved to the states or to the people; and

(b) a greater right of privacy may be reserved to the people under the Montana constitution than is provided in federal law.

NEW SECTION. Section 2. Definitions. As used in [sections 1 through 5], unless the context clearly indicates otherwise, the following definitions apply:

(1) "Access" means to intercept or retrieve data from, communicate with, store data in, or otherwise make use of any resources of a computer, system, or network.

(2) "Computer" has the meaning provided in 45-2-101.

(3) "Data" means the representation in any form of information, knowledge, facts, concepts, or instructions that are being prepared, have been formally prepared and are intended to be processed, are being processed, or have been processed in a computer, system, or network.

(4) (a) "Data exchange" means:

(i) uniform resource locators, including a website, that are accessed or retrieved by a user;

1 (ii) all electronic mail sent and received by a user;

2 (iii) all files downloaded or uploaded by a user; and

3 (iv) all data accessed or provided by a user or a subscriber.

4 (b) The term does not include business records kept by a provider of internet service, including
5 accounting, billing, collection, or customer service records.

6 (5) (a) "Information service" means a service that is designed to or has the capability to generate,
7 process, store, retrieve, convey, emit, transmit, receive, relay, record, or reproduce any data, information, image,
8 software program, signal, or sound by means of any component, device, equipment, system, or network, including
9 but not limited to:

10 (i) a computer, computer system, computer network, modem, or scanner;

11 (ii) a telephone, cellular phone, satellite phone, pager, personal communications device, or facsimile
12 machine;

13 (iii) any type of transmitter or receiver; or

14 (iv) any other component, device, equipment, system, or network that uses analog, digital, electronic,
15 electromagnetic, magnetic, or optical technology.

16 (b) The term does not include service provided by a television company using a community antenna
17 system.

18 (6) "Internet" has the meaning provided in 2-17-551.

19 (7) "Network" means a set of related, remotely connected devices and facilities, including more than one
20 system, with the capability to transmit data among any of the devices and facilities. The term includes but is not
21 limited to a local, regional, or global computer network.

22 (8) "Person" means an individual, association, company, firm, partnership, corporation, or limited liability
23 company.

24 (9) (a) "Provider of internet service" means a person who provides a subscriber or a user, with or without
25 a fee, with access to or presence on the internet by means of a switched or dedicated communications channel
26 upon which the provider provides transit routing of internet protocol packets for and on behalf of the user.

27 (b) The term does not include:

28 (i) unless otherwise stated, a person offering, on a common carrier basis, telecommunications as defined
29 by 47 U.S.C. 153;

30 (ii) a person who provides telephone service over the internet or by other means, but only to the extent

1 of that telephone service; or

2 (iii) a person who makes use of the internet available to employees of or persons who contract with that
3 person, but only to the extent of that use of the internet.

4 (10) "Software program" means an ordered set of data representing coded instructions or statements that
5 can be executed by a computer and cause the computer to perform one or more tasks.

6 (11) "Subscriber" means a person who establishes an account with a provider of internet service, whether
7 or not on a fee basis.

8 (12) "System" means a set of related equipment, whether or not connected, that is used with or for a
9 computer.

10 (13) "User" means an individual who uses the services offered by the provider of an internet service but
11 does not include a person who uses the internet as provided by an employer or a contractor as part of an
12 employer-employee or contractor-to-contractor relationship.

13
14 **NEW SECTION. Section 3. Provider of internet service -- information requirements -- notice --**
15 **unintentional disclosure -- penalties.** (1) (a) Except as provided in [section 4], a provider of internet service may
16 not disclose the record of a user's data exchange with the provider of internet service unless the subscriber gives
17 permission, in writing or by electronic mail, to the provider of internet service to disclose the information.

18 (b) An electronic mail message from a subscriber giving permission to disclose information relating to
19 any user of that subscriber's account:

20 (i) may not be generated by the provider of internet service;

21 (ii) may not be required as a term of service by the provider of internet service; and

22 (iii) must provide a specific, clear statement from the subscriber acknowledging that the provider of
23 internet service may disclose the user's information.

24 (2) A provider of internet service shall provide notice of the requirements of subsection (1) to each of its
25 subscribers.

26 (3) A provider of internet service may review user data as required by federal law but may not disclose
27 the data to unauthorized third parties for sale, marketing, or any purpose not required by federal law.

28 (4) A provider of internet service may not be held liable for a third party's illegal acquisition of data under
29 this section unless the provider of internet service did not take reasonable steps to maintain the security and
30 privacy of the data.

(5) A provider of internet service who is convicted of knowingly violating any provision of this section is guilty of a misdemeanor and shall be punished as provided in 46-18-212.

(6) This section does not apply to a provider of internet service that is a governmental agency making a disclosure authorized or required by [section 4].

NEW SECTION. Section 4. Authorized disclosures. (1) A provider of internet service shall disclose to a governmental agency the specified data, information, image, software program, signal, or sound contained in the provider's computer, system, or network, telecommunication device, telecommunication service, or information service:

(a) upon presentation of:

(i) a subpoena;

(ii) a search warrant or other order issued by a court of competent jurisdiction to the governmental agency and obtained using the procedures prescribed by law or by demonstrating that the merits of public disclosure clearly exceed the demand for individual privacy; or

(iii) appropriate authority provided by the federal rules of criminal procedure or the stored wire and electronic communications and transactional records access provisions of 18 U.S.C. 2701, et seq.; or

(b) to comply with the terms and conditions that may be required under 5 U.S.C. 552a, 12 U.S.C. 1953, et seq., 12 U.S.C. 3412, et seq., 15 U.S.C. 1681, et seq., 18 U.S.C. 2510, et seq., 20 U.S.C. 1232g, 42 U.S.C. 3796h, 47 U.S.C. 551, et seq., 50 U.S.C. 401, et seq., or 50 U.S.C. 1801, et seq.

(2) A provider of internet service, including a governmental agency, shall disclose to a person any data, information, image, software program, signal, or sound contained in the provider's computer, system, network, telecommunication device, telecommunication service, or information service when required to do so by state or federal law.

(3) A governmental agency that is a provider of internet service may disclose within the governmental agency or to another governmental agency any data, information, image, software program, signal, or sound contained in the provider's computer, system, network, telecommunication device, telecommunication service, or information service concerning its employees, contractors, or other persons with whom the agency does business if the disclosure is necessary for the agency to accomplish its mission and the preponderance of evidence suggests that merits of disclosure exceed any individual right of privacy.

(4) A provider of internet service may disclose a record of a user's data exchange with the provider of

1 internet service for the purpose of:

2 (a) detecting fraud or other unlawful conduct;

3 (b) providing for the security of the service of the provider of internet service and of the network; or

4 (c) public safety.

5

6 **NEW SECTION. Section 5. Enforcement.** (1) The department of justice or an appropriate county
7 attorney may seek an injunction in any court of competent jurisdiction to prevent the continuance of any act or
8 practice that violates any provision of [section 1 through 5].

9 (2) An injunction may be issued without proof of actual damage sustained by any person and does not
10 preclude criminal prosecution and punishment as provided in [sections 1 through 5].

11

12 **NEW SECTION. Section 6. Codification instruction.** [Sections 1 through 5] are intended to be codified
13 as an integral part of Title 30, chapter 14, and the provisions of Title 30, chapter 14, apply to [sections 1 through
14 5].

15

- END -